Proceedings of the Madras Government, Revenue Department,
23rd May 1871.

No. 320. Read the following Proceedings of the Board of Revenue, dated 15th May 1871:—

Read the following letter from the Collector of Malabar, to the Acting Secretary to the Board of Revenue, dated Calicut, 20th April 1871, No. 101.

I HAVE the honour to forward copy of decree and judgment in Case No. 241 on the file of the Betutnad Munsiff, and transferred to the Court of the Principal Sadr Amin of Calicut, defence of which was sanctioned by the Board in their Proceedings of the 18th September 1869, No. 6,988.

2. The suit has been dismissed, but all parties ordered to bear their own costs.

3. To avoid unnecessary reference to the lengthy records connected with the case, which has been going on since 1865, I will briefly recapitulate the facts.

4. An escheat land was settled in favour of one Moidheen Oohmah (female) on the 19th January 1859, she being the original reclaimer of the land and tenant in possession.

5. Payment was to be made in five instalments, of which the 1st, 3rd, and 4th were punctually paid. The second instalment was paid somewhat after date, and interest was charged thereon.

6. The fifth and last instalment, amounting to 60 Rs., was due in the month of Minam 1036 (March 1861), and on the first of that month 30 Rs. was paid, but [illegible] year the land was sold by auction and purchased by one Soolapani Vanyar; subsequent to the auction the balance of 30 Rs. was received by the Tahsildar from the tenant, and she has up to the present time refused to take it back. The Revenue authorities proceeded to place the purchaser in possession against the will of the tenant, and on the latter resisting, the Sub-Magistrate of Betutnad fined her.

7. She then brought a Suit in the Munsiff's Court to regain possession, but this was dismissed. The Civil Judge, however, on appeal remanded the case, instructing the Munsiff that if the plaintiff was ousted from possession otherwise than by a regular process, and if six months had not elapsed, the plaintiff was entitled to be reinstated without reference to the question of title.

8. The Munsiff found that the plaintiff had been ejected against her will within six months of the filing of the suit, and accordingly decreed in her favour.

9. It was expressly stated, however, that Soolapani Vanyar, the second purchaser, had a right to sue for the land on the merits of his title, and accordingly he brought the suit now under discussion against the tenant, including the Collector as a defendant, though throughout that officer had supported his claim.

10. The memorandum of agreement drawn up at the original settlement stipulates that, on failure to pay instalments, interest shall be charged at the rate of twelve per cent., but says nothing about resale. The Principal Sadr Amin has held that this fact, coupled with the circumstance that on the delay in paying the second instalment interest was actually paid, shows the second sale was illegal.

11. It is to be regretted that want of consideration and illegal procedure in the first instance should have subjected the first defendant to five years of litigation; and so far as the merit of the case is concerned, it would be well to let it rest where it is.

12. An important point, however, is involved as to the power of Government to sell an escheat in default of payment of the prescribed instalments. I am informed that in all escheat settlements in South Malabar, the terms of agreement are similar to those in the present case.*

* Copy enclosed.

In North Malabar, on the contrary, the agreements are in the form of which a printed copy is annexed, and contain a clause reserving to Government the alternative of cancelling the sale and reselling instead of merely charging interest. Hitherto in South Malabar land has been constantly sold by auction on failure to pay instalments.

13. The system pursued is to draw up a memorandum of agreement specifying the amount and dates of instalment, and only after payment of the last instalment is a Title-deed issued. It may be argued, therefore, that no sale ever took place, and that in deciding the second issue "has the first defendant a valid title or not," the Principal Sadr Amin should, in the absence of any deed of sale produceable by 1st defendant, have decided against her.

14. The case, however, is such an unsatisfactory one that I am unwilling to recommend an appeal, and would prefer to let the point, if necessary, be settled when we can go into Court with a good case.

Submitted to Government, with a copy of Board's Proceedings, dated 18th September 1868 No. 2088.

2. The case relates to an escheat sale in South Malabar. The first purchaser failed to pay the purchase-money in due course, and the first sale was thereupon cancelled, and the jenm right sold again to a second purchaser. It is now decided that Government had no right to cancel the first sale and sell the land again in the absence of any express agreement to that effect.

3. Even if the Board were sure that the right to cancel sales of jenm right on failure of payment might be maintained, there are special circumstances in the present case which would make it undesirable to appeal.

4. The Board resolve, however, to forward these papers to the Government Pleader, and request him to advise whether, in the absence of any special agreement, Government have a right to cancel a sale of escheated jenm right without the intervention of the Courts as was done in this case.

No. 321.

Order thereon, 23rd May 1871, No. 915.

Miscellaneous.

The Government await the result of the Board's reference to the Government Pleader.

(True Extract.)

(Signed) D. F. CARMICHAEL,
Acting Secretary to Government.

To the Board of Revenue.

Exd. F. R. Bantleman.

Writing executed by G. A Ballard Esq. Collector of Malabar to inhabitant of Deshom Amshom Taluq.

The Jenmom of the noted, about acres in extent has been sold to you by Government for the sum of Rupees

2. This sum is to be paid in the following instalments.

If not paid accordingly this sale shall at any time be cancelled and the Jenmom be resold by Government at your risk, or interest at 12 per cent on balance due will be chargeable at the option of Government and arrears on this account shall be considered as arrears of revenue and be recoverable in the same manner as arrears of revenue under the revenue arrears recovery Act (Act 2 of 1864 Madras)

3. The Government assessment on the above is Rupees

This remains payable, and should a general revision of assessment be made, will be liable to alteration.

4. But when half of the above sum of Rupees has been paid, the right of Government to demand jenmi shistom on the above said will be relinquished for ever, provided the subsequent instalments are duly paid.

5. The payments of instalments should be noted on the back of this paper and certified by the receiving officer. When the amount has been paid a deed conferring the full Jenmom right will be granted you meantime you should keep this document.

മലയാം ജില്ലാ കൽക്കട്ടർ ജി- എ- ബല്ലാർഡ സായ്പ അവർകൾ

താലൂക്ക അംശം ദെശത്ത

എഴുതി കൊടുത്ത ആധാരം മാപ്പിനിൽ കാണിച്ച † എ കദെശം ഏകയുള്ള തനിക്ക ഗവൎമ്മെണ്ടിൽ നിന്ന ഉൎപ്പെടിക്ക ജന്മം വിറ്റിരിക്കുന്നു.

2 ംരം സംഖ്യെ താഴെ പറയുന്ന അവധി പ്രകാരം അടക്കണം.

മെൽപ്രകാരം ഉറ്റുപ്പിക അടച്ചിട്ടില്ലങ്കിൽ ഗവമ്മെൻ്റിന്റെ ബൊദ്ധ്യം പൊലെ യാതൊര സമയത്തെങ്കിലും ംരം വിക്രയത്തെ റദ്ദുചെയ്തു തന്റെ റയൊഗ്യഭാഗ്യത്തിനെ ത ഗവമ്മെണ്ടിൽ നിന്ന ജന്മം രണ്ടാമത വിൽക്കുകയൊ ബാക്കി സംഖ്യക്ക 100-ക്ക 12 പ്രകാരം പലിശ ചുമത്തുകയൊ ചെയ്യും.

ംരം വകയിൽ ഉണ്ടാകുന്ന ബാക്കി നികതി ബാങ്കിയെ പൊലെ വിചാരിക്കപ്പെടുകയും 1864 ലെ മദിരാശി 2-ാം നമ്പ്രായ നികതി ബാക്കി വസൂൽ ആക്ട പ്രകാരം നികതി ബാക്കി വസൂലാക്കുന്നത പൊലെ വസൂലാക്കപ്പെടുകയും ചെയ്യുന്നതാകുന്നു.

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Collector.

Encl: 4

Encl: letter from the Collector of Nicobar dated 20 April 1871 No. 105 4

Rec: 15/7/1

Judl Dept 2216/71

Bo 23 May/71 In. B. No 320

Form alluded to in the above letter.

Revenue 1871. West

No. 1572.

Proceedings of the
Board of Revenue

Dated 15th May 1871
Desp 15 " "
Received 16 " "

Encs 5.

No. Letter from Coll^r of Malabar forwarding copy of decree and judgment passed in Suit No. 241 of 1869 on file of Betutteddi Munsif's Court and transferred to Principal Sadr Amin of Calicut regarding sale of certain land, submitted to Govt. in G.O. No 915 - 25th May 1871 with an order.

No. 915.

To Sadr Ameen re Commissioner's Bill's expenses to be borne by Plaintiff.

Dy. 16/5/71

232 - May 1871.

14 Folio Rs. 9-0 Rec^d 25

Jr 320-321

Cir May 17 & 19